

BEFORE THE  
POSTAL REGULATORY COMMISSION

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Periodic Reporting  
(Proposal Thirteen)

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**Docket No. RM2015-7**

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**UNITED PARCEL SERVICE REPLY  
TO UNITED STATES POSTAL SERVICE OPPOSITION  
TO UPS MOTION REQUESTING ISSUANCE OF AN  
INFORMATION REQUEST RELATED TO  
PROPOSAL THIRTEEN**

**(April 2, 2015)**

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United Parcel Service, Inc. (UPS) respectfully submits this reply to the Answer of the United States Postal Service in Opposition to UPS Motion for Issuance of an Information Request. The Postal Service's effort to stop UPS from accessing a single data file, under protective conditions, is inconsistent with the objectives of transparent and accurate cost attribution that should govern these proceedings. As explained below, the Postal Service does not provide any colorable justification whatsoever for opposing UPS's request. Instead, it lodges a series of arguments that are demonstrably misplaced and meritless.

UPS has spent significant time and resources in closely analyzing Proposal Thirteen and the Postal Service economic models that underlie the proposal. As part of that work, UPS's outside consultants at The Brattle Group, led by Dr. Kevin Neels, have developed an alternative model for cost attribution in this cost segment that provides

more accurate costing in the short term, while pointing toward better, more efficient approaches to cost attribution going forward. See Initial Comments of UPS and Expert Report of Dr. Neels (Mar. 18, 2015). Dr. Neels was able to develop this model even though he faced time and data constraints the Postal Service and its own economists did not face. UPS has explained, however, that Dr. Neels' model can potentially be improved further if Dr. Neels and his team could access one Postal Service data file. This data file contains a "crosswalk" between the routes in the full set of Form 3999 data the Postal Service submitted as part of Proposal Thirteen and the actual ZIP Codes (the "Crosswalk File").

As UPS explained in its opening brief, UPS could use this Crosswalk File for three purposes. First, the Crosswalk File will allow Dr. Neels to "stress test" the alternate city carrier street time model he has developed on a larger set of data, which may yield improvements in the model. In turn, this will allow the Commission, the Public Representative, the Postal Service, and other interested parties to more fully consider the reliability and accuracy of the model proposed by UPS. Second, the Crosswalk File will enable Dr. Neels to examine the relationship between volume and cost for the Postal Service's *entire* city carrier street system, which he expects to yield more accurate attribution of costs to individual products. Third, the Crosswalk File could help show how the Postal Service's own data, collected in the ordinary course of business, could reduce or even replace the Postal Service's heavy reliance on costly special field studies.

These are worthy objectives. As the Commission recently recognized, "[t]he transparent and accurate costing of Competitive products is an issue of critical

importance.” See Dkt. No. ACR2014, Annual Compliance Determination Report, at 85 (Mar. 27, 2015). All of the additional analyses the Crosswalk File would permit are directed toward this goal. And the Commission has specifically recognized that “[i]t may also be appropriate to investigate the suitability of data from existing collection systems . . . to reduce the need for reliance on one-time studies.” Dkt. No. RM2011-3, Order No. 589, Attachment at 1 (Nov. 18, 2010). That is precisely what UPS is trying to investigate here.

Nevertheless, the Postal Service has chosen to oppose this request, seeking to prevent UPS from improving the model Dr. Neels has developed. Surely the Postal Service next intends to submit comments criticizing UPS’s model, while denying UPS access to the very data that may allow it to respond to those criticisms. This is neither fair nor consistent with the type of transparency and rigor that Congress intended when it passed the Postal Accountability and Enhancement Act (“PAEA”). Each of the Postal Service’s arguments lack merit.

*First*, the Postal Service argues that, because the requested file is commercially sensitive, “any rational commercial enterprise would resist attempts to allow outside interests to gain access to” it. Postal Service Opp. at 2. But the Postal Service then acknowledges that UPS seeks access to the data under protective conditions that expressly prevent it from being used for *any* commercial purpose at all. *Id.* at 3 (“The Postal Service does not dispute that the willingness of UPS to limit its access and use of the information in conformance with the terms of the standard protective conditions is a major factor in the evaluation of its request.”). The Postal Service is not any ordinary commercial enterprise; it is an enterprise that is subject to rigorous statutory

requirements regarding its costing practices. Clearly, the fact that Postal Service data may be commercially sensitive does not mean it cannot be accessed under appropriate protective conditions – including the protective conditions to which UPS has agreed. *See, e.g., U.S. Ethernet Innov. LLC v. Acer Inc*, No. 10-CV-03724, 2014 WL 988757, at \*4 (N.D. Cal. Mar. 7, 2014) (“Intel’s argument about harm by disclosure of its confidential information to its competitors is assuaged by production only on an outside counsel, attorneys’ eyes only, basis.”).

*Second*, the Postal Service argues that the request should be denied because “there is no provision in the procedural schedule allowing UPS to submit further research, or to present arguments drawn from the results of such research.” Postal Service Opp. at 3. This is a red herring: of course there was no such provision in the schedule; the Commission had no way of knowing that UPS would submit an alternate model and make the request for additional data. The Commission remains free, however, to adopt the procedural schedule most suitable to getting to the right result.

The goal of this docket is to improve and update the model for city carrier street time cost attribution. The size of this cost segment, the infrequency with which updates to city carrier costing models have taken place, and the long periods of time over which mailers, the Postal Service, the Commission, and other stakeholders have had to live with out-of-date costing procedures, make it clear that city carrier costing should be examined closely now, while interested parties are engaged and alternative proposals have been presented. Arbitrary deadlines and manufactured haste should not get in the way.

The Commission has the power to modify the schedule for this docket, as it has done in the past in similar situations. See, *e.g.*, Dkt. No. RM2012-6, Order No. 1753, at 12 (Jun. 18, 2013) (ordering additional round of comments to ensure proposal was “thoroughly reviewed”); Dkt. No. RM2008-4, Order No. 203, at 14 (Apr. 16, 2009) (“PAEA . . . allows methodological issues to be resolved through informal rulemakings which allow collaborative research and multi-party input. That is the Commission’s goal in conducting methodological rulemakings under rule 3050.11.”); Dkt. No. RM2008-4, Order No. 104, at 31 (Aug. 22, 2008) (“[T]he procedures proposed [in Rule 3050.11] are highly flexible, and would vary according to the complexity of the proposed change and the level of documentation supporting it.”).

The Postal Service certainly provides no compelling reason for the Commission to cut off further analysis. The only apparent reason for haste is that, if Proposal Thirteen is approved, the Postal Service might implement the methodology change as the basis for FY 2015 reporting of city carrier street time costs. But the end of the fiscal year is six months away and the Annual Compliance Report (“ACR”) is not due for nine months. Thus, if the Commission grants UPS’s motion and grants an opportunity for further submissions because of this new data, the Postal Service should still have plenty of time to implement a new costing model for its 2015 ACR. Even if the Commission’s work is not completed in time for integration into the 2015 ACR, there are no statutory deadlines applicable to this proceeding that require completion before the next ACR, so

a new model could just as easily be adopted in the following year. Again, the most important thing is to get it right.<sup>1</sup>

*Third*, the Postal Service attacks a straw man. It argues: “UPS purports to establish a ‘need’ for the requested data by appearing to portray the additional data as necessary to *expand* the scope of its model. The problem is, UPS has yet to come forward with an *unexpanded* version of the model.” Postal Service Opp. at 4.

This is an odd argument, because UPS did not argue that the Crosswalk File “is necessary to *expand* the scope of its model.” *Id.* The word “expand” does not even appear in UPS’s motion. Instead, as noted above, UPS explained that the file would help UPS “stress test” its preliminary model; it would help UPS’s consultants improve the accuracy of cost attribution to individual products flowing from the model; and it would point toward better costing approaches going forward. The Postal Service does not address any of the purposes to which the Crosswalk File will actually be put.

The Postal Service appears to be arguing that UPS should not be able to get the Crosswalk File, which would allow it to conduct analyses using the full set of national ZIP Codes in the Form 3999 data, because UPS’s preliminary model does not rely on the very limited set of Form 3999 data associated with the 300 ZIP Codes analyzed in Proposal Thirteen. But this argument is nonsensical. The data used in Proposal

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<sup>1</sup> UPS is hardly alone in having serious concerns about Proposal Thirteen. All of the parties who filed substantive comments were critical of Proposal Thirteen. See Initial Comments of the Public Representative, at 8 (Mar. 18, 2015) (Proposal Thirteen “likely understates the proportion of total street time dedicated to package and accountable delivery, reducing the costs attributed to parcels. As most parcel products are competitive, understating the costs attributable to parcels has serious compliance implications.”); Initial Comments of the Association for Postal Commerce, at 2 (Mar. 18, 2015) (“The Study also raises some questions to which the Commission should seek answers before accepting the proposed analytical principle change.”).

Thirteen and the Form 3999 data are two distinct datasets, and the choice of which to use depends on the purpose and scope of analysis.

Most of the Proposal Thirteen dataset was collected through the Delivery Operations Information System (the “DOIS Dataset”).<sup>2</sup> In developing the alternative model, Dr. Neels and his team also used this DOIS Dataset for three reasons. First, using the same data as the Postal Service allowed “apples to apples” comparisons between the two models. Second, all of the Form 3999 data fields are contained within the DOIS Dataset, so there is no reason to use Form 3999 data when DOIS data is available. Finally, the DOIS Dataset was constructed very recently specifically for purposes of Proposal Thirteen, while the Form 3999 data was collected for each route in the ordinary course of business over a period of several years. See CCST Report at 5. Thus, for analyses that are limited to the 300 ZIP Codes associated with Proposal Thirteen, there are reasons to use the DOIS data rather than the Form 3999 data.

If one wants to run a *national* analysis, however, there is a clear reason to use the full Form 3999 data (which access to the Crosswalk File would allow). The Postal Service did not produce national DOIS data, whereas it did produce national Form 3999 data, albeit with masked ZIP Codes. Dr. Neels has already examined the national Form 3999 dataset that has been produced and verified it contains the information he and his team would need to conduct a national analysis. In contrast, the form and content of any national DOIS data is unknown. Thus, it is irrelevant that UPS has not yet utilized the Form 3999 data associated with the 300 ZIP Codes analyzed in Proposal Thirteen.

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<sup>2</sup> The dataset also contains data collected as part of two special studies conducted over two-week time periods, one in April and May of 2013 and one in March and April of 2014. See CCST Report at 32, 93. These special studies involved data on collections, accountables, and parcels.

UPS now seeks to conduct analyses using a national set of city carrier ZIP Codes, which is possible with Form 3999 data. As explained above, being able to use the national set of ZIP Codes could both improve the accuracy of cost attribution in the short term and help “reduce the need for reliance on one-time studies,” Dkt. No. RM2011-3, Order No. 589, Attachment at 1 (Nov. 18, 2010), an objective the Commission has recognized is a worthy pursuit. The Postal Service provides no reason to deny UPS the opportunity to do this.

*Fourth*, the Postal Service suggest that providing access to the Crosswalk File would be pointless, because UPS would not be able to use it. See Postal Service Opp. at 5 (“[T]he UPS motion itself concedes that the access to the requested matching information would still not yield a full set of data capable of being plugged into the contemplated model.”). This argument is disingenuous, because UPS has already explained that while collection and accountables volumes are not available in the Form 3999 data, Dr. Neels has a plan for reliably imputing those volumes to the national Form 3999 data. See Neels Report at 27 (“I found that it was possible . . . to develop regression models that could impute collection volumes with reasonable accuracy.”). Thus, far from “acknowledging that even a grant of access to all that it seeks would not allow estimation of an adequate model,” UPS has explained why the opposite is true.

In any event, the Postal Service’s self-serving prediction that UPS’s analysis of the data will be fruitless should not be allowed to prevent UPS from actually analyzing the data and presenting the results of this analysis to the Commission. At bottom, UPS’s request clearly furthers the goals of transparency and accurate cost attribution



upon which the PAEA relies. The Postal Service's effort to prevent UPS from conducting further analyses does not.

### **CONCLUSION**

For the foregoing reasons, UPS respectfully requests that this Motion be granted. To the extent the Commission grants this motion, UPS respectfully requests that the Commission further grant, in the same order, non-public access for the same UPS outside counsel and consultants for whom the Commission has already approved access to non-public Postal Service data in this docket. See Order No. 2363.

Respectfully submitted,

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